

Statement of Substance of Interview under 37 C.F.R § 1.133

Applicants submit this Statement of Substance of Interview in accordance with 37 C.F.R § 1.133 to be made of record for the Application identified herewith and respectfully requests entry of this statement.

The statement provides a summary of a telephone interview held September 10, 2009, with Examiner Queenie Dehghan and Applicants' representative. Applicants first wish to thank the Examiner for being available and for providing useful information and recommendations. Her professionalism was much appreciated.

In the telephone interview held on September 10, 2009, the cited documents of U.S. Application Publication No. 2002/0004111 (hereinafter "Matsubara") and U.S. Patent No. 3,838,998 (hereinafter "Matthews") were discussed and distinctions between these documents and Applicants' claimed invention were also discussed. In addition, Applicants suggested that the Examiner may have a misunderstanding or incomplete definition of the term "agglomerate." While the Examiner provided a general meaning of the term as "gathering into a mass," Applicants expressed an understanding that the term also included some sort of cohesion and was not just a simple gathering, which could be applied to air or water. Applicants, having reviewed an Interview Summary mailed September 14, 2009, herewith also wish to correct the record (i.e., statements written on the continuation sheet) because Applicants did not state that an "agglomerate is understood to be particles that have to be put through a heat treatment and bound together." Applicants merely offered heat treatment as one example of how an agglomerate may be formed. In addition, Applicants correct the record of the Interview Summary mailed September 14, 2009, by making it clear that Applicants submitted that Matsubara does not form an agglomerate, and instead it was pointed out by Applicants that Matsubara wet pulverized its materials in a combustible liquid to "prepare a slurry," which Applicants argued is not an agglomerate precursor. The slurry of Matsubara is then formed into liquid droplets, which is expressly taught at para. [0035] of Matsubara. The liquid droplets are pressurized under gas and

heat, and combustion of the liquid is necessary for the formation of hollow glass spheres, which is expressly taught at para. [0047]-[0048] and [0049]-[0052] of Matsubara. It was further reiterated by Applicants in the interview that the slurry and droplet method as provided by Matsubara is not combinable with Matthews. This is because Matthews does not form spheres from liquid droplets. Instead, Matthews forms dry feed particles, as taught in Col. 8, and it is the feed particles that are then heated at very specific sequence of different temperatures in a furnace to form spheres. Matthews specifically teaches that its feed particles must include two different glass formers that are heat at two different temperatures in order to form the spheres, as expressly taught in Col. 10 and 13. Moreover, it was reiterated by Applicants in the interview that Matthews also relies on distinctly different starting materials and that Matthews does not have feed particles that have an alkali metal oxide content of less than about 10 wt. % based on the weight of the feed particle (as taught by Matthews at Col. 6, lines 50-56), and, thus, Matthews starting materials are contrary to and very different from Applicants claimed invention.

This is intended to be a written statement as to the substance of a telephone interview held on September 10, 2009, with Examiner Dehghan and an Interview Summary mailed September 14, 2009.

Remarks

Claims 1-24 are pending with this Application. New claims 25 and 26 have been added. With this Office Action, Applicants have amended the claims, which are fully supported by the as-filed application, such as at paragraphs [0049], [0060] and [0065].

Applicants respectfully refer the Examiner to remarks made in the Statement of Substance of Interview under 37 C.F.R § 1.133 beginning on page 7 of the paper for further discussion regarding cited documents Matthews and Matsubara.

Applicants respectfully note that they have on three separate occasions provided distinctions between Matthews and Matsubara. In brief, formed spheres of Matsubara are “at most 30 um” [e.g., para. 0012]. In fact, Matsubara teaches away from making large particles of not more than 15 μm because otherwise Matsubara explains that the particles are not satisfactory and lose the required surface characteristics and there is deterioration of other properties as well (e.g., para. 0017]). Matsubara’s glass spheres are designed to be absent of any alkali metal, stating specifically as “containing no alkali metal or substantially no alkali metal” (para. [0060]). Matsubara does not prepare an agglomerate precursor, an agglomeration or bound particles, does not fire the agglomerate precursor and does not prepare microspheres having an average diameter greater than 30 microns, as is claimed by Applicants’ claimed invention. Matsubara’s spheres are formed from liquid droplets under pressure, gas and heat, and it is the combustion of the liquid that is necessary for the formation of hollow glass spheres (para. [0047]-[0048] and [0049]-[0052]). As such, Matsubara does not teach each and every element of Applicant’s claimed invention or the claimed invention on its whole. Accordingly, Matsubara cannot anticipate or be obvious over the claimed invention.

Matsubara’s method of making a sphere cannot be combined with that of Matthews because the two processes are very different. One cannot take an individual step or composition of an entirely different method and assume it will work on another very different method without

explicit evidence that such methodology is possible. The Examiner has not provided any such explicit evidence, which is required to form a *prima facie* case.

Mathews does not prepare spheres from liquid droplet nor does Matthews form particles less than 30 microns in size. Furthermore, Matthews specifically requires an alkali metal oxide content of 20 wt. % in its feed particles (e.g., Col. 6, ll.50-56) in order to create and achieve its spheres, which are stated to have a size range of 50 to 5000 microns (e.g., Abstract; Col. 11, ll. 33-36). Moreover, Matthews' spheres are formed from dry feed particles that require two glass formers, a high temperature and a low temperature glass former. The spheres of Matthews are formed from the dry feed particles and require at least 4 temperature changes. As such, Matthews does not teach each and every element of Applicant's claimed invention or the claimed invention on its whole. Accordingly, Matsubara cannot anticipate or be obvious over the claimed invention. In addition, the teachings of Matsubara cannot be combined with Matthews, because they are very different by teaching different methods of making and different formed products.

Applicants provide secondary evidence in the form of Hawley's Condensed Chemical Dictionary to provide the Examiner with an understanding of the term agglomerate (see agglomeration, pg. 29), slurry (pg. 1131) and suspension (pg. 1197). Applicants respectfully submit that term may only take on a broader interpretation when the term itself is not modified by the language of the claim.

Applicants have shown that neither Matsubara nor Matthews alone or when combined teach each and every element of Applicant's claimed invention or the claimed invention on its whole, and that the references neither anticipate nor are obvious over the claimed invention. Combining Matsubara or Matthews with other secondary references cited by the Examiner, such as Seki, Veatch, Kizilshtein, Brown or Netting, still do not overcome the overarching lacking of teachings found in Matsubara and Matthews.

Applicants respectfully request all rejections under 35 U.S.C. 103(a) be removed and the application be allowed to proceed to issuance.

Conclusion

Applicants respectfully submit that the Application for patent is in condition for allowance. Applicants earnestly seek allowance of the claims, as provided in the Listing of Claims, which begin on page 3 of this paper.

Should the Examiner have questions, comments, or suggestions in furtherance of the prosecution of this Application, please contact Applicants' representative at 214-999-4330. Applicants, through their representative, stand ready to conduct a telephone interview with the Examiner to review this Application if the Examiner believes that such an interview would assist in the advancement of this Application.

To the extent that any further extension fees are required, the Commissioner is hereby authorized to charge payment of any additional fees to Deposit Account No. 07-0153 of Gardere Wynne Sewell LLP and reference Attorney Docket No. 129843-1102. Please credit any overpayments to this same Deposit Account.

This is intended to be a complete response to a notice of non-compliant amendment mailed on June 8, 2009.

Please direct all correspondence to the practitioner listed below at Customer No. 60148.

Respectfully submitted,

/Monique A. Vander Molen/

Monique A. Vander Molen
Registration No. 53,716

Dated: October 9, 2009